

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT C. JONES

COMPLAINANT

VS.

BENNY JONES WATER SUPPLY

DEFENDANT

CASE NO.
90-312

O R D E R

On October 3, 1990, the Commission received a formal complaint against Benny Jones Water Supply ("Jones Water") from a customer, Robert C. Jones. Mr. Jones complained that Jones Water had recently informed him that no new tap-ons would be permitted on the system and that Jones Water would not continue to supply water service to homes already on the system if the property was sold.

By Order of the Commission dated October 29, 1990, Jones Water was notified that it had been named as a defendant in a formal complaint and was directed to satisfy the matters complained of or to file a written answer to the complaint within 10 days from the date of the Order. Jones Water filed its response to the complaint on November 15, 1990.

Commission Staff initiated its own investigation into Jones Water when a search of Commission records revealed that Jones Water had no tariff on file with the Commission, nor had it filed

annual reports or complied with other requirements of KRS Chapter 278. Commission Staff conducted a field investigation of Jones Water on January 9, 1991 and subsequently submitted an Unauthorized Utility Inspection Report to the Commission on January 11, 1991. The report, which is attached hereto as Exhibit A and incorporated by reference herein, concluded that Jones Water owns, controls, and operates a water system used in treating and distributing water to the public for compensation, and thus is a utility subject to the jurisdiction of the Commission pursuant to KRS 278.010(3)(d). The report was mailed to Jones Water on January 17, 1991 with a request that it respond to the report no later than February 22, 1991. Jones Water's response to the report was filed with the Commission on February 12, 1991. The response corrected the report's finding that residents of homes pay \$200 per year for water, and stated the correct amount to be \$125. Jones Water asserts that the purpose of this fee is to help maintain the system, and that it does not represent payment for water. Jones Water reiterated its position that the system was not developed as a commercial venture.

Upon review of the information contained in Exhibit A, and being otherwise sufficiently advised, the Commission finds that Jones Water is a utility as defined in KRS 278.010(3)(d). Even though Jones Water characterizes the annual fees paid by its customers as fees for maintenance of the system rather than payment for water, and even though the Commission understands that Jones Water was not developed as an independent commercial venture, Jones Water is nonetheless being compensated for

furnishing water to the public. It thus meets the statutory definition of a utility subject to the jurisdiction of the Commission. Courts have held that "compensation" does not necessarily involve an element of profit, but may involve merely reimbursement for expenses of operation. Schenley Distillers Corp. v. United States, 61 F.Supp. 981 (D. Del. 1945), aff'd per curiam, 326 U.S. 432 (1946).

IT IS THEREFORE ORDERED that:


1. Pursuant to KRS 278.160, Jones Water shall file a tariff with the Commission setting out all rates and conditions for service established by it and collected or enforced, no later than April 15, 1991.

2. Pursuant to KRS 278.260, Jones Water shall appear at a hearing to be held in this matter on the complaint of Robert C. Jones on April 30, 1991, at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 18th day of March, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner

Commonwealth of Kentucky
Public Service Commission

UNAUTHORIZED UTILITY INVESTIGATION REPORT

Benny Jones Water Supply
Monticello, Kentucky

On January 9, 1991, an investigation was made of the Benny Jones Water Supply, Wayne County, Kentucky, as a result of a formal complaint filed by Robert C. Jones, customer of Benny Jones Water Supply ("B. Jones Water"). The Commission staff having no knowledge of the existence of this utility determined an investigation was in order. This investigation was conducted by K. Michael Newton of the Commission staff with information provided by Jay Humphrey, treatment plant and distribution operator of B. Jones Water and Terry Bell, manager of Beaver Creek Resort Marina.

Investigation

Commission staff talked to Jay Humphrey, Terry Bell and reviewed information received from Sharon Roe, manager of B. Jones Water, about this water system and its development. In 1973, Benny Jones purchased the water system, several rental cabins, and land along a ridge above Lake Cumberland at auction. Prior to 1973, the water system belonged to Pat Vogler who had constructed it to serve Beaver Lodge Dock and a few rental cabins. However since 1973, B. Jones Water has been expanded to include a trailer park development and a number of vacation and permanent homes. The marina was sold in 1981 and is now called the Beaver

Creek Resort. Beaver Creek Resort has grown to include: a large number of houseboat rentals, numerous slips for privately owned houseboats, plus an extensive number of leisure boats.

B. Jones Water has approximately 47 water customers. Customers include: about 21 trailers, 25 homes, and the marina. Jay Humphrey stated that B. Jones Water has no plans for expanding the water distribution system because during the summer months the water system has a hard time meeting current customer demand.

B. Jones Water consists of: a submersible pump; chlorinator; a 100-gallon pressure storage tank; booster pump; sand filter; approximately a 14,000-gallon clearwell, approximately 500 feet of 1-inch water line; 10,560 feet of 2-inch water line and two storage tanks (8,000 and 3,200 gallons). B. Jones Water is an unmetered system. Average water pressure for the water system ranges between 60 psi and 120 psi. Present customers pay a flat rate as follows: \$200 per year for homes and \$600 per year for the marina. The cost of water service for each trailer is included in each trailer's rental pad fee. A map showing the location of B. Jones Water is attached.

Jay Humphrey and Terry Bell are both certified water treatment and distribution operators by Natural Resources and Environmental Protection Cabinet's ("N.R.E.P.C.") Division of Water ("DOW"). B. Jones Water has had several water violations in reference to turbidity during the months of January, March, April,

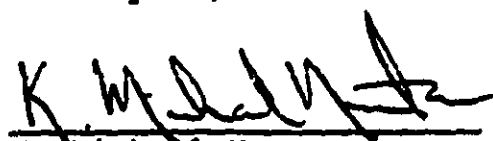
and June of 1990 according to DOW. In addition, B. Jones Water failed to supply DOW with two samples of water per month during April and June of 1990. However, B. Jones Water did not have any boil water notices issued in 1990 in regard to bad water samples.

According to Jay Humphrey the cost of maintenance and operation of the water system escalates in the spring, summer and fall. Because the water system is operating at capacity during this time, Jay Humphrey stated customers complain about not having enough water. Therefore, current customers owning homes have been told by Benny Jones and his representatives that if customers sell their property they will be responsible for finding another water source. Hence, Robert C. Jones has filed a complaint with the Commission in reference to this matter.

Conclusions

It appears to this investigator that Benny Jones owns, controls, and operates a water system in eastern Wayne County used in treating and distributing water to the public for compensation. According to KRS 278.010 (3)(d), Benny Jones d/b/a Benny Jones Water Supply in Wayne County, Kentucky would be a utility and would be subject to the jurisdiction of the Public Service Commission in the same manner and to the same extent as any other utility.

Submitted,
January 11, 1991


K. Michael Newton
Utility Investigator

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Wayne County





Photograph showing 1" intake water-line from the back of the treatment building to the lake.

Photograph of treatment plant building containing: sand filter, clearwell, pressure tank, and chlorine injector.





Service waterline from the treatment plant down to the marina.

Photograph showing the two storage tanks next to trailer park on top of ridge above the lake.

